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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Parts 2 and 90 of the)
Commission's Rules to Provide for the)
Use of 200 Channels Outside the)
Designated Filing Areas in the)
896-901 MHz and the 935-940 MHz)
Bands Allotted to the Specialized)
Mobile Radio Pool)
)
Implementation of Section 309(j))
of the Communications Act -)
Competitive Bidding)
)
Implementation of Sections 3(n) and)
332 of the Communications Act)

PR Docket No. 89-553

DOCKET FILE COPY ORIGINAL

PP Docket No. 93-253

GN Docket No. 93-252

REPLY COMMENTS OF MOTOROLA, INC.

Motorola, Inc., (Motorola) hereby submits this reply to the opening comments filed May 24, 1995, in response to the Commission's *Second Report and Order and Second Further Notice* in the above-captioned docket.¹ As discussed below, the opening commenters generally support the Commission's proposals for implementing Congress's mandate to afford designated entities a meaningful opportunity to participate in the provision of 900 MHz SMR services. To the extent that the Commission

¹ Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Implementation of Sections 3(n) and 332 of the Communications Act, FCC 95-159 (released April 17, 1995) (*Second Report and Order and Second Further Notice of Proposed Rulemaking*) [hereinafter *Second Report and Order and Second Further Notice*].

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decides to adopt any additional procedures for this purpose, Motorola strongly suggests that it avoid the use of preferential mechanisms that are likely to result in successful constitutional challenges, thereby further delaying the implementation of 900 MHz SMR service. In addition, Motorola continues to believe that the Commission proposed an appropriate small business threshold for use in the 900 MHz SMR context. Specifically, the small business definition proposed by Commission will ensure effective participation in 900 MHz SMR offerings by truly small businesses.

I. Background

As discussed in its opening comments in this proceeding, Motorola believes that the Commission's proposed designated entity preferences for the 900 MHz SMR auctions are appropriately tailored to the particular characteristics of the 900 MHz SMR service and the individuals and entities expected to bid on 900 MHz SMR licenses. In the *Second Report and Order and Second Further Notice*, the Commission found that, unlike broadband PCS and nationwide and regional narrowband PCS, the capital outlay requirements for 900 MHz SMR operations are unlikely to present significant barriers to entry by designated entities.² Accordingly, it proposed the following preferential procedures: (1) to offer all eligible small businesses, including those owned by women, minorities and rural telephone companies, a 10 percent bidding credit on any of the 10-channel blocks within each MTA; (2) to adopt an installment

² *Second Report and Order and Second Further Notice* at ¶¶ 20, 136.

payment option and reduced down payment for small businesses; and (3) to limit eligibility for the foregoing preferences to small businesses with less than \$3 million in average gross revenues for the preceding three years.³ The Commission explicitly declined to establish a separate entrepreneurs' block for bidding by designated entities.⁴

In its comments, Motorola presented factual data verifying the Commission's finding that the estimated cost of deploying a 900 MHz SMR system are well below those for broadband and nationwide narrowband PCS systems.⁵ Significantly, most other commenters addressing the issue agree that the Commission's proposals accord with the specific attributes of the 900 MHz SMR service.⁶ Most commenters also

³ *Second Report and Order and Second Further Notice* at ¶¶ 129-147.

⁴ *Id.* at ¶ 147.

⁵ Comments of Motorola, Inc., PR Docket No. 89-553, at 6-7 (filed May 24, 1995). In particular, Motorola stated that although costs vary depending on the technology being used, a single-site 900 MHz SMR system generally may be installed for \$100,000 to \$200,000. A system adequate to provide service throughout an entire MTA should cost less than \$2 million. By contrast, the estimated cost of deploying a single-site broadband PCS system is \$750,000, and the estimated cost of deploying an MTA-wide broadband PCS system is \$100 million just in the initial year of implementation. With regard to nationwide narrowband PCS, Motorola noted public records indicating that Mobile Telecommunications Technology Corporation (Mtel) estimates the cost of construction its nationwide narrowband PCS system at \$160 million. *Id.* at 6-7, and n.13.

⁶ *See, e.g.,* Comments of the American Mobile Telecommunications Association, Inc. ("AMTA"), PR Docket No. 89-553, at 8-9 (filed May 24, 1995); Comments of CelSMer at 5-6, PR Docket No. 89-553 (filed May 24, 1995) (recommends, however, an increased bidding credit for small businesses); Comments of Geotek Communications, Inc. ("Geotek"), PR Docket No. 89-553, at 2-4 (filed May 24, 1995). (continued...)

support the Commission's proposed small business definition.⁷ In addition, many commenters agree with the Commission's determination that its proposals will ensure ample opportunities for participation by designated entities in the 900 MHz SMR service, rendering adoption of additional procedures unnecessary.⁸

Various other commenters urge the Commission to revise its proposed preferences in different respects. For example, the National Association of Black Owned Broadcasters ("NABOB") suggests that the Commission's proposed procedures do not adequately account for the difficulties minorities face in raising capital. Accordingly, NABOB urges the Commission to adopt a 25% bidding credit for all minority-owned businesses having up to \$125 million in gross revenues, and to limit bidding eligibility on 20% of the available channels to minority-owned companies.⁹ In addition, the Chief Counsel for Advocacy of the U.S. Small Business Administration ("SBA") expresses concern that the proposed enhancements for small businesses may

⁶(...continued)

24, 1995) (urges, however, that bidding credits be limited to unencumbered spectrum blocks and that applicants be required to submit upfront payments for each license for which an interest is designated on the FCC Form 175); Comments of Nextel Communications, Inc. ("Nextel"), PR Docket No. 89-553, at 5 (filed May 24, 1995); Comments of Ram Mobile Data USA, L.P., ("RMD"), PR Docket No. 89-553, at 6-7 (filed May 24, 1995).

⁷ See, e.g., Comments of AMTA at 8; Comments of CelSMer at 5; Comments of Geotek at 2; Comments of RMD at 6-7.

⁸ See, e.g., Comments of AMTA at 8-9; Comments of CelSMer at 5; Comments of Nextel at 5; Comments of RMD at 6-7.

⁹ Comments of the National Association of Black Owned Broadcasters ("NABOB"), PR Docket No. 89-553, at 7-8 (filed May 24, 1995).

be insufficient if very large enterprises unsuccessful in the 800 MHz SMR auction migrate to the 900 MHz SMR band. As a result of this concern, as well as its expectation that the cost of deploying a 900 MHz SMR system may require a "huge capital expenditure," the SBA recommends adoption of a \$15 million small business threshold.¹⁰ Motorola addresses these suggestions in turn.

II. If The Commission Adopts Any Additional Preferences For The Participation Of Designated Entities In The 900 MHz SMR Service, It Should Avoid The Use Of Procedures Likely To Result In Challenges That Could Delay Quick Implementation Of 900 MHz SMR Licensing.

Motorola wishes to emphasize that it supports adoption of procedures that will improve the chances for fuller participation by minorities and other designated entities in the provision of 900 MHz SMR service. In addition, Motorola supports the adoption of procedures, in accordance with the requirements of Section 309(j), that will not delay implementation of 900 MHz SMR licensing.¹¹ Accordingly, Motorola urges

¹⁰ Comments of the Chief Counsel for Advocacy of the U.S. Small Business Administration ("SBA"), PR Docket No. 89-553, at 7-11 (filed May 24, 1995).

¹¹ As the Commission is aware, the 900 MHz SMR industry has been slow to develop ever since the initial 900 MHz SMR allocation was made nearly ten years ago. See Amendment of Parts 2 and 90 of the Commission's Rules to provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, 8 FCC Rcd 1469, 1470-71 (1993) (First Report and Order and Further Notice of Proposed Rule Making); see also PowerSpectrum, Inc., Request for Rule Waiver, 8 FCC Rcd 4452 (1993) (Order). Both the industry and the Commission are hopeful that implementation of

(continued...)

the Commission to devise preferences that will avoid court challenges -- *i.e.*, to utilize only preferences that are well supported by the record in this proceeding. As mentioned, Motorola firmly believes that the Commission's original proposals do just that.

III. Any Revision of the Small Business Threshold Must Be Small Enough To Provide Meaningful Opportunities For Businesses That Are Small 900 MHz SMR Participants.

As indicated in its opening comments, Motorola believes that the Commission struck an appropriate balance in proposing to limit eligibility for qualification as a small business to entities that, in combination with their affiliates and attributable investors, have average gross revenues for the preceding three years of less than \$3 million.¹² Specifically, Motorola estimates that 25 percent or more of all existing 900 MHz SMR licensees have gross revenues of less than \$3 million.¹³ As such, the proposed \$3 million threshold appropriately targets the bidding credits and other benefits to businesses that are "small" relative to other 900 MHz SMR participants. As mentioned, most other commenters agree that the proposed \$3 million revenue

¹¹(...continued)
wide-area licensing procedures will help promote the successful development of 900 MHz SMR operations and expedite the provision of service to the public. As such, it is crucial that the issuance of wide-area licenses not be delayed by the adoption of preferential procedures that are likely to result in protracted litigation.

¹² Comments of Motorola at 7; *see also Second Report and Order and Second Further Notice* at ¶ 138.

¹³ Comments of Motorola at 7.

threshold is an appropriate threshold for defining small businesses in the 900 MHz SMR context.¹⁴

In light of the above, Motorola is concerned that raising the threshold for qualification as a small business to \$15 million, as suggested by the SBA, will dilute the effectiveness of the Commission's proposed preferences as means to ensure the participation of truly small businesses. In Motorola's experience, the 900 MHz SMR service is one of the few areas in the telecommunications industry where relatively small companies are able to participate because the capital requirements are not overly burdensome. Setting a low small business size standard will have the effect of encouraging participation by quite small businesses. Accordingly, Motorola urges that a definition be adopted that sets the small business threshold at the lowest practical level.¹⁵

IV. Conclusion

Motorola continues to support adoption of the proposed preferential procedures delineated in the *Second Report and Order* and *Second Further Notice* as means to

¹⁴ See, e.g., Comments of AMTA at 8; Comments of CelSMer at 5; Comments of Geotek at 2; Comments of RMD at 6-7.

¹⁵ Moreover, the SBA's concerns that potential 800 MHz SMR bidders may migrate to the 900 MHz SMR auctions is wholly speculative. In addition, contrary to the SBA's assertions, the 900 MHz SMR auctions are expected to precede the 800 MHz SMR auctions by several months. Thus, there is no basis for expecting a spill-over from the 800 MHz auctions to the 900 MHz auctions.

ensure that small businesses and businesses owned by women and minorities are given meaningful opportunities to participate in the provision of 900 MHz SMR service. The opening comments generally support the conclusion that these proposals are properly geared toward the particular characteristics of the 900 MHz SMR service and that they will succeed in fulfilling Congress's mandate.

Respectfully submitted,

By: Mary E. Brooner / KK
Mary E. Brooner
Manager, Wireless Regulatory
Policy
Corporate Government Relations
1350 I Street, N.W.
Suite 400
Washington, D.C. 20005

June 12, 1995

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of June, 1995, I caused copies of the foregoing to be hand-delivered to the following persons:

Ms. Regina Keeney
Chief, Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

Ms. Rosalind K. Allen
Chief, Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5202
Washington, D.C. 20554

Mr. David Furth
Deputy Chief
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5202
Washington, D.C. 20554

Mr. William E. Kennard
General Counsel
Federal Communications Commission
1919 M Street, N.W., Room 614
Washington, D.C. 20554

Mr. James W. Olson
Chief, Competition Division
Office of General Counsel
Federal Communications Commission
1919 M Street, N.W., Room 919
Washington, D.C. 20554

Mr. Gregory Rosston
Office of Plans and Policy
Federal Communications Commission
1919 M Street, N.W., Room 822
Washington, D.C. 20554


Robin Walker
Robin Walker